

CHAPTER 4-14.1 AGRICULTURALLY DERIVED FUEL TAX FUND

4-14.1-01. Legislative policy and purpose. It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by improving the agricultural economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural products and stimulate and foster agricultural diversification and encourage processing innovations.

4-14.1-01.1. Definition. In this chapter, unless the context otherwise requires, "eligible facility" means an ethanol production plant constructed in this state after July 31, 2003.

4-14.1-02. Agricultural fuel tax fund - Purposes. There is created in the state treasury a fund known as the agricultural fuel tax fund which must be used to fund programs for the enhancement of agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission necessary to implement the purposes of this chapter.

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agricultural fuel tax fund must be administered by the agricultural products utilization commission. The commission consists of nine members, five of whom must be appointed by the governor for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Three members appointed by the governor must be actively engaged in farming in this state and two members appointed by the governor must be actively engaged in business in this state. The agriculture commissioner shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the commissioner must be actively engaged in farming in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July. The director of the department of commerce division of economic development and finance, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

4-14.1-03.1. Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources consistent with the purpose of this chapter.
2. The commission may administer grant programs consistent with the purpose of this chapter including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;
 - g. An agricultural prototype development grant program;

- h. An agricultural technologies grant program; and
 - i. A North American marketing grant program.
- 3. As a condition of the grant, the commission may require that the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or may be of any other type or method determined by the commission to be in the public interest.

4-14.1-04. Agricultural products utilization commission - Meetings - Personnel - Reports. The agricultural products utilization commission, which is an office of the department of commerce division of economic development and finance, shall meet as necessary and shall report to each session of the legislative assembly. The commission may secure office space, employ needed personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

4-14.1-05. Agricultural products utilization commission - Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive as per diem compensation sixty-two dollars and fifty cents for each day devoted to attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

4-14.1-06. Agricultural products utilization commission - Administrative expenses. Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of needed personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds provided to the commission each biennium excluding federal funds.

4-14.1-07. Duration and limitation of ethanol plant production incentives - Report to budget section. Repealed by S.L. 2003, ch. 57, § 8.

4-14.1-07.1. Ethanol plant production incentives - Report to budget section.

- 1.
 - a. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to nine hundred thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
 - b. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million gallons [56781000 liters] or more in the previous fiscal year is eligible to receive up to four hundred fifty thousand dollars in production incentives from the state during the 2005-07 biennium and may receive no production incentives under this section after the 2005-07 biennium.
- 2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers.

3. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

4-14.1-07.2. Ethanol production incentives - Payments for increased production. If an ethanol plant that was in operation in this state before July 1, 1995, increases its production by the lesser of ten million gallons [37854000 liters] or fifty percent of its production capacity during any twelve-month period beginning on or after July 1, 2005, that plant is eligible to receive ethanol production incentive payments under section 4-14.1-08 on its increased production.

4-14.1-08. Ethanol production incentive - Calculation - Payment. The office of renewable energy and energy efficiency shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by AXXIS petroleum. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1.
 - a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the office of renewable energy and energy efficiency shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the office of renewable energy and energy efficiency shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the office of renewable energy and energy efficiency shall subtract from the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
2.
 - a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the office of renewable energy and energy efficiency shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the office of renewable energy and energy efficiency shall subtract zero from any amount payable under this section.
 - c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the office of renewable energy and energy efficiency shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

4-14.1-09. Subsidy limitations. The office of renewable energy and energy efficiency may not distribute more than one million six hundred thousand dollars annually in payments under section 4-14.1-08. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars. Change in ownership of an eligible facility does not affect the ten million dollar cumulative total allowed to be paid to that eligible facility under this section.

4-14.1-10. Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the office of renewable energy and energy efficiency for use in paying ethanol production incentives under sections 4-14.1-07.1, 4-14.1-07.2, 4-14.1-08, and 4-14.1-09.